February 21, 1997

Diane T. Kawauchi
Deputy Corporation Counsel
Department of the Corporation Counsel
City and County of Honolulu
Honolulu Hale
Honolulu, Hawaii 96813

Dear Ms. Kawauchi:

Re: Suspended Police Officers

This is in response to your request to the Office of Information Practices ("OIP") for an advisory opinion regarding disclosure of government records, maintained by the Honolulu Police Department ("HPD"), regarding the above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), as amended by Act 242, Session Laws of Hawaii 1995, the HPD must disclose certain disciplinary information from its records identifying police officers who have been suspended.

BRIEF ANSWER

By adopting Act 242, Session Laws of Hawaii 1995, the Legislature intended to keep confidential certain information about suspended police officers by recognizing a significant privacy interest in this information. No statute has since been adopted which expressly makes this information confidential under this Act, or thereafter.

Subsequently, the Hawaii Supreme Court decided in State of Hawaii Organization of Police Officers v. Society of Professional Journalists—University of Hawaii Chapter, S. Ct. No. 19583 (Nov. 15, 1996) ("SHOPO") that this information is neither highly intimate nor personal and, therefore, it is not protected under the Hawaii Constitution's right to privacy.

Therefore, because (1) the legislative expression of a privacy interest was placed in the portion of the UIPA that *requires balancing of the privacy interest against the public's interest*, section 92F-14, Hawaii Revised Statutes, and (2) the public's interest in this information outweighs whatever privacy interests remain to suspended police officers in this information, disclosure of this information would not be a clearly unwarranted invasion of personal privacy. Because information about suspended police officers does not fall within the "clearly unwarranted invasion of privacy" exception, or any other exception, the UIPA would require the public disclosure of this information. See Haw. Rev. Stat. § 92F-11 (1993). This opinion is limited to finding that the HPD must disclose the same information about suspended police officers as is listed in section 92F-14(b)(4)(B), Hawaii Revised Statutes, because the SHOPO ruling specifically held that the disclosure of this information does not violate the Hawaii Constitution.

Based upon the SHOPO case, the OIP finds that the most recent version of the UIPA, as amended by Act 242, 1995 Session Laws of Hawaii, applies prospectively regardless of when the requested records were created. Therefore, Act 242, Session Laws of Hawaii 1995 will apply to the UIPA record requests made after the Act's effective date of July 6, 1995, irrespective of whether the records requested were created before or after this date.

FACTS

In 1993, the Society of Professional Journalists—University of Hawaii Chapter ("SPJ") submitted a request to the HPD for disclosure of the names of police officers who were suspended or discharged under the UIPA. In 1994, the State of Hawaii Organization of Police Officers ("SHOPO") sought a declaratory judgment to prevent the HPD from disclosing the requested information to the SPJ. In turn, the SPJ filed suit asking the court to order the City and County of Honolulu ("City") to produce all government records responsive to the SPJ's request. The two lawsuits were

consolidated when the court granted the City's motion for consolidation in 1994. See SHOPO, at 7-17 for factual and procedural history of the case.

While the SHOPO case was pending in the courts, the Legislature, in 1995, considered Senate Bill No. 171, which, when introduced, sought to sweep all police disciplinary information within the significant privacy interest recognized by section 92F-14(b)(4), Hawaii Revised Statutes, for "[i]nformation in an agency personnel file." The bill was subsequently amended to provide that, with regard to police officers, no significant privacy was recognized for discharge information only.

In the SHOPO decision issued on November 15, 1996, the Supreme Court of the State of Hawaii ruled that the HPD must disclose to the SPJ the names of police officers who were suspended or discharged under the UIPA.

In a letter dated December 20, 1996, you asked the OIP for further guidance regarding the disclosure of the HPD's records about police officers who were suspended for misconduct, particularly those records that were created before the effective date of Act 242, Session Laws of Hawaii 1995. In your letter, you noted that this Act 242, Session Laws of Hawaii 1995, was intended to limit the public disclosure of government records concerning discipline of police officers only to those cases where the misconduct resulted in the officers' discharge. As your letter noted, this Act states that "[t]his Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date." Act 242, § 4, Session Laws of Hawaii 1995 at 641, 643. In response, the OIP provides this advisory opinion.

DISCUSSION

I. INTRODUCTION

A. General Rule of Disclosure

The UIPA imposes "[a]ffirmative agency disclosure responsibilities" and establishes the general rule that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a)(1993); see SHOPO at 5. Section 92F-13, Hawaii Revised Statutes, sets forth exceptions to this general rule, including the exception for "[g]overnment records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat.

§ 92F-13(1)(1993). Section 92F-14, Hawaii Revised Statutes, clarifies that "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. § 92F-14(a) (Supp. 1996).

The UIPA's legislative history, states that:

> Once a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure. If the privacy interest is not 'significant,' a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy.

SHOPO at 5-6, citing H. Conf. Comm. Rep. No. 112-88, 14th Leg, 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

B. Privacy Interest in Personnel Files

The UIPA recognizes a significant privacy interest in "[i]nformation in an employee's personnel file." Haw. Rev. Stat. § 92F-14(b)(4) (Supp. 1996). When there is a request for personnel information in which an employee has a significant privacy interest the UIPA requires the application of a balancing test. This balancing of interests allows one to determine whether the public's interest outweighs the privacy interest in the information. See Haw. Rev. Stat. § 92F-14(a) (Supp. 1996).

In some instances, the Legislature has already balanced the privacy interest against the public interest and determined, as a matter of public policy, that the public's interest outweighs the privacy interest so that the information must be disclosed upon request. SHOPO at 36. Section 92F-14(b)(4)(A) and (B), Hawaii Revised Statutes, are specific examples of the legislative balancing in favor of public interest. These sections include all personnel information which is required by law to be disclosed under section 92F-12(a), Hawaii Revised Statutes, and information about government employees' employment-related misconduct resulting in suspensions or discharges. Before the adoption of Act 242, Session Laws of Hawaii 1995, the provisions concerning the disclosure of disciplinary information was applied to all government employees equally.

II. ACT 242, SESSION LAWS OF HAWAII 1995

A. Legislative Intent

With the adoption of Act 242 the privacy interests of suspended police officers in employment-related misconduct were removed from the balance achieved by the Legislature in section 92F-14(b)(4)(B), Hawaii Revised Statutes.[1] Act 242 recognized that suspended police officers, as opposed to discharged police officers and all other government employees, have a significant privacy interest in information relating to their employment misconduct.

The Legislature believed that this different treatment for police suspensions was appropriate, stating that "because police work is unlike any other, because their standards of discipline are much stricter and because their contact with the public is

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[1]Act 242, § Laws of Hawaii 1995, amended section 92F-14(b)(4)(B), as follows:

> (b) The following are examples of information in which the individual has a significant privacy interest:
>
> . . . .
>
> (4) Information in an agency's personnel file, or applications nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:
> (A) Information disclosed under section 92F-12(a)(4); and
> (B) The following information related to employment misconduct that results in an employee's suspension or discharge:
> (i) The name of the employee;
> (ii) The nature of the employment related misconduct;
> (iii) The agency's summary of the allegations of misconduct;
> (iv) Findings of fact and conclusions of law; and
> (v) The disciplinary action taken by the agency;
> when the following has occurred: the highest non-judicial grievance adjustment procedure timely invoked by the employee or the employee's representative has been conducted; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision; provided that this subparagraph shall not apply to a county police department officer [with respect to misconduct that occurs while the officer is not acting in the capacity of a police officer;] <u>except in a case which results in the discharge of the officer;</u> . . . .

Act 242, § 1, Session Laws of Hawaii 1996, 641, 642.

daily and consistent, police officers should be treated differently than all other public employees." S. Stand. Comm. Rep. No. 627, 18th Leg., 1995 Reg. Sess., Haw. S.J. 1064 (1995); see also H. Stand. Comm. Rep. No. 1584, 18th Leg., 1995 Reg. Sess., Haw. H.J. 1627 (1995) (recognizing that "police officers, unlike most government and private employees, are subject to para-military discipline which manifests itself in the form of frequently applied suspensions from duty for misconduct or violation of departmental rules," and that, unlike other agencies, police departments are overseen by independent, outside commissions).

The Legislature addressed the public's interest in information about suspended police officers by assuming the duty to "exercise oversight" over police discipline. Specifically, Act 242, Session Laws of Hawaii 1995, requires each chief of police of every county to annually report to the Legislature all incidents resulting in police officers' suspensions or discharges for violation of certain police standards of conduct, but without disclosing the identities of the individuals involved. Through this annual report, the Legislature would be able to determine whether "the number of cases involving malicious use of physical force and mistreatment of prisoners particularly, [sic] increase to the point of concern by the legislature," whereby "a new policy on police misconduct will likely be developed." Id.

As the legislative history of Act 242, Session Laws of Hawaii 1995, indicates, and as it was generally understood while the bill was being considered, the Legislature intended that this bill's provisions, including the reporting requirement imposed upon the police chiefs, would serve to balance the competing privacy and public interests in favor of keeping confidential information about suspended officers. Specifically, the Legislature found that "this bill, as amended, balances the concern over the public's right to know with the considerations involved in ensuring and maintaining an effective system of law enforcement in the State." S. Comm. Rep. No. 627, 18th Leg., 1995 Reg. Sess., Haw. S.J. 1064, 1065 (1995).

B. Impact of SHOPO on Privacy Interest

The Hawaii Supreme Court's decision in SHOPO followed more than a year after Act 242, Session Laws of Hawaii 1995, went into effect July 6, 1995. In this case, among other issues, the City argued that the disclosure of police disciplinary records, pursuant to section 92F-14(b)(4), Hawaii Revised Statutes,[2] was an invasion of police officers' right to privacy in violation of the Hawaii State Constitution. Article I, section 6,

[2] The City's argument referred to Act 191, Session Laws of Hawaii 1993, which had amended section 92F-14(b)(4), Hawaii Revised Statutes, and was effective at the time of the SPJ's record request to the HPD in 1993, before the effective date of Act 242, Session Laws of Hawaii 1995.

of the Hawaii Constitution states that "[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right." SHOPO at 35.

The Hawaii Supreme Court rejected the City's argument and ruled:

> In adopting Act 191, the Legislature balanced the competing interests of individual privacy and public access and concluded, as a matter of public policy, that after a public employee has exhausted any nonjudicial grievance procedures available to him or her and charges of employment-related misconduct have been sustained, resulting in suspension or discharge, the public interest in disclosure of that person's name and information regarding the misconduct outweighs the employee's privacy interest. The City has failed to overcome the presumption that the Legislature has achieved this balance in accordance with the mandate of article I, section 6 of the Hawai'i Constitution.

SHOPO at 36 (emphases added).

The Hawaii Supreme Court did not limit its ruling to merely finding that the City failed to overcome the presumption that the Legislature properly achieved a balance under the Hawaii Constitution. Rather, the Court went on to affirmatively declare:

> Moreover, considering the history of article 1, section 6 of the Hawai'i Constitution, our prior interpretation of that section, and the great weight of authority from other jurisdictions, we hold that information regarding a police officer's misconduct in the course of his or her duties as a

> police officer is not within the protection of Hawai'i's constitutional right to privacy.

SHOPO at 36 (emphasis added). The Hawaii State Supreme Court further ruled:

> [I]nformation regarding charges of misconduct by police officers, in their capacities as such, that have been sustained after investigation and that have resulted in suspension or discharge is not "highly personal and intimate information" and, therefore, is not within the protection of Hawai'i's constitutional right to privacy.

Id. at 42 (emphases added).

The Hawaii Supreme Court's SHOPO ruling on whether Act 191, Session Laws of Hawaii 1993, was constitutional affects in a contrary manner the balance that the Legislature meant to achieve by Act 242, Session Laws of Hawaii 1995.

In particular, the Supreme Court found that information about suspended or discharged police officers is not "highly personal and intimate information" and, hence, is outside the protection of the Hawaii Constitution's right to privacy. Therefore, the SHOPO ruling eliminates the primary intent of Act 242, Session Laws of Hawaii 1995, of recognizing that suspended police officers have significant privacy interests in employment-related misconduct information. Because the SHOPO decision erodes the significant weight assigned by the Legislature to the suspended officer's privacy interest, as set out in Act 242, then only a "scintilla" of public interest is enough to overcome this privacy interest in the balancing test. See SHOPO at 5-6; citing H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

On the other hand, it can be argued that the Legislature has the prerogative to create a significant privacy interest in certain government information, despite the lack of any constitutional privacy right. This argument would then recognize the significant privacy interest in information about suspended police officers created by Act 242, Session Laws of Hawaii 1995, despite the SHOPO decision.

Therefore, under the balancing test, the legislative intent to make this information confidential would be placed on the "privacy" side of the balance. However, the Hawaii Supreme Court's ruling in SHOPO tips the balancing heavily toward finding that the public has a strong counterveiling interest in information about

suspended police officers.[3] The Court recognized the relationship between the right to privacy under the Hawaii Constitution and the UIPA's "clearly unwarranted invasion of personal privacy" exception by affirming that "[t]he UIPA, and the challenged amendment by Act 191, [Session Laws of Hawaii 1993,] implements article I, section 6 of the Hawaii Constitution." SHOPO at 35; citing Haw. Rev. Stat. § 92F-2 (1993)("[t]he policy of conducting government business as openly as possible must be tempered with by a recognition of the right of the people to privacy, as embodied in section 6 and 7 of Article I of the Constitution of the State of Hawaii").

Whether one finds that SHOPO eliminates the Legislature's finding of a significant privacy interest or whether the Legislature has the power to create the right, the result is the same—disclosure of information about suspended police officers cannot be found to constitute a clearly unwarranted invasion of personal privacy under the UIPA. Thus, appreciation of the SHOPO decision to Act 242, Session Laws of Hawaii 1995, produces a contrary result to what was intended by the Legislature.

C. The Statutory Scheme of the UIPA

The legislative intent behind the UIPA's structure itself must also be considered in determining how Act 242, Session Laws of Hawaii 1995, operates. First, the OIP notes that the 1995 Legislature did not expressly cloak with confidentiality information about suspended police officers. The statutory scheme of the UIPA does provide an exception from disclosure for those "[g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure." Haw. Rev. Stat. § 92F-13(4) (1993). For this exception to apply, the Legislature must "expressly require" the withholding of information from the general public. "The purpose of requiring an express withholding policy is to put a burden on the legislative and judicial branches to make an affirmative judgment respecting the need for confidentiality." OIP Op. Ltr. No. 92-6 (June 22, 1992), citing Uniform Information Practices Code § 2-103 commentary at 18 (1980) (emphasis added).[4]

[3] Cases from other jurisdictions have pointed to a strong public interest in police discipline information as well. E.g., Cowles Publishing Co. v. State Patrol, 742 P.2d 587 (Wash. 1988) and Coughlin v. Westinghouse Broadcasting and Cable, Inc., 603 F. Supp. 377 (E.D. Pa), cited in SHOPO at 40-41.

[4] The UIPA was modeled upon the Uniform Information Practices Code, which was drafted by the National Conference of Commissioners on Uniform State Laws. The UIPA's legislative history provides that the Model Code Commentary should be consulted to "guide the interpretation of similar provisions found in the [UIPA]." H. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988); see also Haw. Rev. Stat. § 1-24 (1993).

Second, when it established the UIPA, the Legislature explained that "[o]nce a significant privacy interest is found, the privacy interest will be balanced against the public interest in disclosure." H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988). Thus, the Legislature makes clear its intent that a finding of a significant privacy interest in a particular government record does not automatically mean protection of the information under the "clearly unwarranted invasion of privacy" exception. Rather, the information must then be assessed under the "balancing test." The balancing test is one of the UIPA's "underlying purposes and policies," which is to "balance the individual privacy interest and the public access interest, allowing access unless it would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. § 92F-2 (1993) (emphasis added), cited in SHOPO at 35-6.

Perhaps, because the Legislature intended and believed that it had performed the balancing of the privacy and public interests to weigh in favor of confidentiality under the UIPA's "clearly unwarranted invasion of personal privacy" exception, the Legislature did not consider providing an express statutory prohibition against the disclosure of police disciplinary information. However, as discussed, the SHOPO case upset the balance that the Legislature had believed that it achieved in Act 242, Session Laws of Hawaii 1995.

D. Resolving the Tension between SHOPO Ruling and Legislative Intent behind the UIPA and Act 242, Session Laws of Hawaii 1995

The OIP must be guided by the rules of statutory construction in order to resolve the tension between (1) the legislative intent behind the UIPA's statutory scheme, in particular, its balancing test; (2) the legislative intent behind Act 242, Session Laws of Hawaii 1995; and (3) the Hawaii Supreme Court's ruling in SHOPO that disclosure of information about suspended or discharged police officers does not violate the right to privacy under the Hawaii Constitution.

The rules of statutory construction applied in this State were summarized In re Hawaiian Telephone Company, 61 Haw. 572, 608 P.2d 383 (1980). In this case, the Hawaii Supreme Court stated:

> The fundamental objective in construction of statutes is to ascertain and give effect to the intention of the legislature. The intention of the legislature is to be obtained primarily from the language contained in the statute itself. Accordingly, a basic tenet of a statutory interpretation is that

> where the language of the law in question is plain and unambiguous, construction by this court is inappropriate and our duty is only to give effect to the law according to its plain and obvious meaning. On the other hand, where the language of a statute is ambiguous or of doubtful meaning, or where literal construction of the statute would produce an absurd or unjust result, clearly inconsistent with the purposes and policies the statute was designed to promote, judicial construction and interpretation are warranted and also the court may resort to extrinsic aids to construction.

61 Haw. at 577-78, (citations omitted) cited in Educators Ventures, Inc. v. Bundy, 3 Haw. App. 435, 437 (1982).

Applying these principles of statutory construction, the OIP finds that the specific language of Act 242, Session Laws of Hawaii 1995, is clear and unambiguous in its recognition of a significant privacy interest in information about suspended police officers. However, when applying the SHOPO decision to the balance and the overall purposes of the UIPA, it is apparent that the information must be disclosed, despite the legislative intent to the contrary that is made clear in the legislative history behind Act 242.

Unlike a court of law or the Legislature itself, the OIP does not have the power to give effect to the legislative intent in this case. First, Act 242, Session Laws of Hawaii 1995, was specifically placed in a part of the UIPA that would require disclosure if the public interest outweighed the private interest. Second, there is no ambiguity of meaning in Act 242 and in its placement within section 92F-14, Hawaii Revised Statutes. Third, the Legislature did not enact a specific and express statute which made the names of these suspended officers confidential.

Based upon the compelling authority of the Hawaii Supreme Court's decision in SHOPO however, the OIP cannot conclude that the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy under the UIPA. The OIP recognizes that this result is contrary to the Legislature's intent expressed in the legislative history behind Act 242, Session Laws of Hawaii 1995. However, this result is consistent with the Legislature's overall intent as to the proper application of the UIPA in that a significant privacy interest must be balanced against the public interest, when assessing whether the "clearly unwarranted invasion of personal

privacy" exception applies, and that a direct prohibition against disclosure must be accomplished by an express withholding statute.

Therefore, the OIP is constrained to opine that information regarding employment-related misconduct by suspended police officers is (1) not protected by a right to privacy under the Hawaii Constitution, as decided by the Hawaii State Supreme Court in SHOPO; (2) the public's interest in this information outweighs the privacy interests; and (3) no other exception to disclosure exists.

Given the obvious tensions between the legislative intent of Act 242, the SHOPO decision, and the overall purpose of the UIPA, the only possible conclusion that OIP can reach is that disclosure of this information would *not* be a clearly unwarranted invasion of personal privacy under the UIPA and, therefore, information required to be made public under section 92F-14(b)(4)(B) for discharged officers, must also be made public for suspended officers. This opinion is limited to finding that the HPD should disclose the same information about suspended police officers as is listed in section 92F-14(b)(4)(B), Hawaii Revised Statutes, because the SHOPO ruling specifically held that the disclosure of this information does not violate the Hawaii Constitution.

II. APPLICATION OF ACT 242, SESSION LAWS OF HAWAII 1995, TO RECORDS CREATED BEFORE EFFECTIVE DATE OF ACT

Section 1-3, Hawaii Revised Statutes, provides that "[n]o law has any retrospective operation, unless otherwise expressed or obviously intended." Haw. Rev. Stat. § 1-3 (1993). The Hawaii Supreme Court has also previously noted the "general rule in most jurisdictions that [s]tatutes or regulations which say nothing about retroactive application are not applied retroactively if such a construction will impair existing rights, create new obligations or impose additional duties with respect to past transactions." SHOPO at 18, citing Clark v. Cassidy, 64 Haw. 74, 77 n. 6 (1981).

In SHOPO, the City and County of Honolulu ("City") had argued that the SPJ's UIPA request in 1993 for police disciplinary information would result in a retroactive application of the UIPA's 1993 amendment because the SPJ requested information from records created before the amendment's effective date. The Hawaii Supreme Court rejected this argument:

> HRS sec. 92F-11(a) provides that "[a]ll government records are open to public inspection unless access is restricted or closed by law." (Emphasis added.) "`Government record'

> means information maintained by an agency in written auditory, visual, electronic, or other physical form." HRS § 92F-3. No distinction is made, nor is there any exemption, based upon the date that the record was created. We therefore hold that HRS Chapter 92F applies prospectively requiring disclosure of records maintained by State agencies regardless of when the records came into existence.

SHOPO at 21 (emphasis added).

We believe that the Hawaii Supreme Court's conclusion that the UIPA "applies prospectively . . . regardless of when the records came into existence" applies even to the most recent version of the UIPA, as amended by Act 242, Session Laws of Hawaii 1995. Act 242, Session Laws of Hawaii 1995, did not add to the UIPA any exception to disclosure based upon the creation date of a record. Because the UIPA, as amended by Act 242, Session Laws of Hawaii 1995, "applies prospectively," it governs public disclosure of records in response to any request made after the Act's effective date, irrespective of whether the records requested were created before or after this date. See OIP Ltr. No. 90-39 at 13 (Dec. 31, 1990) (no retroactive application of law because the UIPA requires present disclosure of government records regardless of when they were created, unless an exception to disclosure applies).

The OIP believes that section 4 in Act 242, 1995 Session Laws of Hawaii, which states that the Act does not affect rights and duties that have matured, and proceedings that were begun before the Act's effective date, does not change the conclusion that the UIPA operates prospectively.

In the facts presented in the SHOPO case, the SPJ had requested police disciplinary information in 1993, and had filed suit in circuit court to appeal the denial of its request in 1994. Citing to section 4 of Act 242, Session Laws of Hawaii 1995, the Hawaii Supreme Court determined that the "instant proceedings were begun well before the July 6, 1995 effective date [of Act 242] and are, therefore, not affected by Act 242." SHOPO at 22.

Based upon the Supreme Court's holding, the OIP finds that section 4 of Act 242, Session Laws of Hawaii 1995, refers to rights or duties that have matured, or proceedings that were begun, with regard to UIPA requests, such as the SPJ's request, that were submitted before this Act's effective date. This finding is consistent with the

Supreme Court's ruling that the UIPA operates prospectively without regard to when the record was created. In other words, Act 242, Session Laws of Hawaii 1995, does not apply to UIPA requests received before the Act's effective date of July 6, 1995, but does apply only to those requests received thereafter, including requests for records created before this date.

CONCLUSION

The OIP finds that Act 242, Session Laws of Hawaii 1995, governs disclosure of police disciplinary records in response to UIPA requests for this information received after the Act's effective date. However, when balancing the privacy and public interest in the disclosure of information, as enumerated in section 92F-14(b)(4)(B), Hawaii Revised Statutes, in HPD's personnel records about suspended police officers, the OIP finds that the disclosure of this information does not constitute a clearly unwarranted invasion of personal privacy. This conclusion necessarily follows from the Hawaii Supreme Court's ruling in SHOPO that the disclosure of this information does not violate the right to privacy under article I, section 6, of the Hawaii Constitution. If the Corporation Counsel, or its client, feels uncomfortable with the manner in which the OIP resolved the various tensions, the Corporation Counsel is not foreclosed from seeking a declaratory judgment.

Very truly yours,

Lorna L. Aratani
Staff Attorney

APPROVED:

Moya T. Davenport Gray
Director

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